IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5025 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JENAJI KAKUJI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5025 of 1994

MR SURESH M SHAH for Petitioner.

NOTICE SERVED BY DS for Respondent No. 1,3-4

Mr. KT Dave, AGP for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 21/04/2004

ORAL JUDGEMENT

In the instant petition, the petitioner has challenged legality and validity of order dated 14/26th August 1993 passed by learned Special Secretary (Appeals), Revenue Department, State of Gujarat, Ahmedabad in dismissing Revision Application No. SRD

7/1993 and confirming order of summary eviction passed by Prant Officer,Gandhinagar dated 10th March 1993 for breach of Section 7 of Bombay Prevention of Fragmentation and Consolidation of Holdings Act and imposing penalty of Rs. 150/-.

2. The case of the petitioner is that he was owner of land bearing Survey No. 595 and land bearing Survey No. 596 was owned by respondents No. 3 and 4. That by registered Sale Deed dated 30th October 1985. The petitioner purchased the land bearing Survey No. 596 from respondents No. 3 and 4 and since then they were in possession of land bearing Survey No. 596. Pursuant to the said sale deed, the name of petitioner was also mutated in the revenue record. It seems that after a period of 7 years the respondent No.2 issued show cause notice dated 10th September 1992 calling upon the petitioner to show cause why steps under the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act (hereinafter referred to as 'the Act') should not be initiated and taken, alleging inter alia that the purchase of Survey No. 596 from respondents No. 3 and 4 by registered Sale Deed is hit by the provisions of the Act. The petitioner replied to the said show cause notice and denied the allegations levelled in the said show cause notice. It was specific case of the petitioner that he is the owner of land bearing Survey No. 595 which is adjacent to land bearing Survey No. 596 and that Survey No. 596 is an irrigated land. The Prant Officer, Gandhinagar by his judgment and order dated 10th March 1993 held that the aforesaid transfer is hit by Section 7 of the said Act and that there is no evidence produced to support the case of the petitioner that he is the owner of adjacent land bearing Survey No. 595 and therefore the Prant Officer, Gandhinagar has passed an order of summary eviction and imposed the penalty of RS. 150.

3. That being aggrieved and dissatisfied with the order passed by the Prant Officer, Gandhinagar, dated 10th March 1993 for summary eviction and imposing penalty of Rs. 150, and holding that there is a breach of Section 7 of the Act, the petitioner preferred revision application before the learned Special Secretary (Appeals), Revenue Department, State of Gujarat which was numbered as Revision Application No. SRD 7/1993. It was contended on behalf of the petitioner that exercise of power by the Prant Officer was after an unreasonable period and the Prant Officer could not have exercised the power after a period of 7 years. On merits also, the petitioner has submitted that he is the owner of land bearing Survey No. 595 which is adjacent to land bearing Survey No. 596 and therefore there is no question of

fragmentation. That the learned Special Secretary (Appeals), Revenue Department, State of Gujarat, by his judgment and order dated 14/26th August 1993 dismissed the said revision application confirming the order passed by the Prant Officer, Gandhinagar dated 10th March 1993. The aforesaid two orders had given rise to the present Special Civil Application under Article 226 of the Constitution of India.

4. Mr. Mehul S. Shah, learned advocate appearing for the petitioner has submitted that both the authorities below have materially erred in coming to the conclusion that by the transfer and purchase of land bearing Survey No. 596 by the petitioner there is a breach of provision of Section 7 of the Act. He has further submitted that the revisional authority has not properly considered the fact that the Prant Officer should not have exercised the powers for breach of Section 7 after the period of 7 years after the purchase more particularly in view of the fact that in between the petitioner had developed the land and has spent considerable amount. He has also further submitted that in fact he is the owner of land bearing Survey No. 595 which is just adjacent to the land bearing Survey No. 596 and therefore there is no breach of provisions of the Act by the aforesaid sale.

5. Shri K.T. Dave, learned A.G.P. appearing on behalf of respondent No.2 has tried to support the orders passed by both the authorities below. He has submitted that there is a finding of fact given by both the authorities by which it is held that the sale transaction was hit by the provisions of Section 7 of the Act and therefore both the authorities below have rightly passed the order of summary eviction under Section 9 of the Act.

6. I have heard the learned advocates appearing on behalf of the petitioner as well as on behalf of the respondents. I have also considered the order passed by both the authorities below. Though the sale transaction had taken place on 30th October 1985 by registered Sale Deed and the show cause notice was issued by the Prant Officer on 10th September 1992, i.e. after a lapse of about 7 years, and in between the petitioner had already developed the land in question spending some considerable amount, there is no explanation whatsoever given by the Prant Officer for exercise of power after the lapse of 7 years. In a catena of decisions by the Hon'ble Supreme Court as well as this Court it is held that revisional powers/suo motu powers can be exercised by the authority within a reasonable time. In view of the aforesaid fact, when the powers are exercised after the period of 7

years, the Prant Officer was not justified in passing the order of summary eviction and penalty under Section 7 of the Act in a proceeding which was initiated by him after the period of 7 years. On this ground alone the petitioner is required to be allowed. The revisional authority has also not properly considered the aforesaid aspect with regard to limitation and exercise of power by the Prant Officer within a reasonable time, more particularly in view of the fact that in between the petitioner had developed the land spending some considerable amount. In this view of the matter, on the point of limitation alone, the present Special Civil Application succeeds and the order passed by both the authorities below, i.e., the order dated 10th March 1993 passed by the Prant Officer, Gandhinagar and the order passed by the revisional authority dated 14/26th August 1993 passed in Revision Application No. SRD 7/1993, are hereby quashed and set aside. The Special Civil Application is allowed. Rule is made absolute accordingly with no order as to costs.

rmr. [M.R. Shah, J.]